

ENVIRONMENTAL INTEGRITY PROJECT

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Ms. Rebecca Kane
Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Mail Code 2222A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

**RE: Comments on the Enforcement and Compliance History Online
(ECHO) Database**

Dear Ms. Kane:

Thank you for your invitation to comment on the Environmental Protection Agency's (EPA) Enforcement and Compliance History Online (ECHO) database. These comments are submitted on behalf of the Environmental Integrity Project, a nonprofit organization that works closely with grassroots environmental groups to promote fair and effective enforcement of federal environmental laws. We are submitting these comments in conjunction with some of our local partners including Lori Ehrlich of HealthLink, Inc., Lisa Graves Marcucci of Jefferson Action Group, Inc. and Ann Tillery of Beaumont, Texas.

We welcome EPA's decision to publicize the inspection, compliance and enforcement records of major sources of air and water pollution and hazardous waste. While this data can and should be improved, such progress will only come by continuing to subject the information to public scrutiny and comment, as the Agency has done in this case. For the following reasons, we hope you will reject recommendations from some states and industry associations to delay public access to this information until it can be perfected.

1) Enforcement data such as notices of violations, consent decrees, and the compliance status of individual companies are required by law to be made public. The public's right to know is frustrated, however, when such information is made difficult to obtain or understand through bureaucratic inertia or, in some cases, the desire to spin information for political purposes. Simply stated, the public ought to know whether a company has broken an environmental law, and what has been done about it, without having to submit cumbersome Freedom of Information Act requests for information that is required to be publicly available in the first place.

2) The Environmental Protection Agency and states have spent many years and millions of dollars modernizing compliance data systems. These efforts began at least as far back as 1994 with the reorganization of EPA's enforcement program, and have been periodically supplemented with grants to states for data enhancements. Some of this investment has led to real progress, such as better tracking of environmental results from EPA enforcement cases. Further improvements in data quality and accuracy are likely to come, however, only if both EPA and states understand that this information will be in the public domain. In our experience, most states are not likely to do much to improve public access to enforcement data without leadership from EPA. The Environmental Protection Agency recently completed a review of enforcement data in Illinois, Indiana, Michigan, Wisconsin, and Minnesota and, with the exception of Indiana, found that data generally could be obtained only through laborious hand searches of state files, and was often incomplete.

3) Enforcement information in the ECHO data base is largely based on submittals from the state agencies that have the lead responsibility for permitting and enforcement under most federal laws. EPA accommodated state agencies by providing them with the opportunity to submit corrections to ECHO before the information was made public. In addition, both states and the regulated community have the opportunity to correct ECHO data on an ongoing basis. Some states appear to have effectively boycotted this process by refusing to request corrections to the EPA data, waiting until the review process has expired, then criticizing the Agency for publishing data that is inaccurate. For example, when the ECHO pilot was released, the state of Florida issued a press release denouncing data inaccuracies, but did not explain why the state did not correct these errors during the data review period before ECHO was made accessible to the public. EIP was later able to obtain detailed information about the state's review of facilities in the ECHO database, but this information was apparently never provided to EPA. Furthermore, unlike other states, (Indiana, for example) Florida does not make its enforcement data available on the Internet.

We offer the following specific suggestions in the hope that EPA will continue to expand and improve upon ECHO:

- 1) ECHO data should include at least five years of enforcement data, rather than the current two, and preferably go back even further. This historical information will make it easier to identify facilities or companies that appear to violate laws frequently. Such information would be useful in evaluating permit decisions and enforcement actions, particularly in states that have enacted or are considering laws to address chronic violators.
- 2) ECHO search functions should be expanded to allow for the retrieval of data for all plants owned by a single company, so that users like state

agencies, investors and the general public can better assess corporate-wide performance. This may require use of Dun & Bradstreet to link subsidiaries to corporate parents that may have different names.

- 3) The ECHO data base should also allow for retrieval of data for all plants within a particular state. The Environmental Integrity Project's review of seven states including Indiana, Illinois, Michigan, Wisconsin, Minnesota, Texas and Florida identified only one that had useful enforcement information available on its website. Some states, like Michigan, offer periodic updates of enforcement activity, but the information is not consistent and does not allow for the kind of comprehensive review of compliance status that ECHO provides.
- 4) To be useful for the general public, ECHO will need to move away from the bureaucratic codes used to describe regulations, compliance status and enforcement activities, and toward plainer English. For example, acronyms like "PSD" and "NESHAP" may mean little to the average user. A data dictionary would help, but ECHO would also benefit from a short introduction to basic concepts (e.g., the steps in an enforcement action and what it means for a violation to be "addressed") so that users have some idea of the significance of the various data elements they are reviewing.
- 5) The data could also be simplified by reducing the number of columns (especially if ECHO is to include more than two years of data) with repetitious annotations of the compliance status in every quarter. Instead, OECA could indicate the date of any outstanding violations over the past five years, when they were "addressed" or the facility returned to compliance, what enforcement actions were taken, and the value of any injunctive relief, SEP or penalty that resulted. The information currently displayed in ECHO may have made sense when data was coded and managed in a mainframe, but is less useful to the kind of "windows" style access to data that OECA is moving towards and is not very intelligible to the public. In some cases, it is not clear whether the particular enforcement action listed is connected to the violations identified for the facility.
- 6) Some data on cases in which EPA has the lead for enforcement appears to be missing or incomplete. For example, we were unable to locate the BP-Amoco plant at Yorktown, Virginia, although it is currently the subject of a multimedia consent decree entered in the summer of 2001. Similarly, the BP-Amoco plant in Whiting, Indiana, which is subject to the same consent decree, does appear in the data base but its compliance status is listed as "unknown." Several cases against high profile defendants like American Electric Power could not

be found in the ECHO data base or did not list violations of Clean Air New Source Review requirements. To ensure that the data is complete and consistent, enforcement managers at headquarters should at least review ECHO data to be sure that it includes updated information on consent decrees or complaints filed by EPA. Providing the Federal Register citation for any consent decrees negotiated by EPA would allow the user to look up basic information about the consent decree.

- 7) ECHO should include links to any state websites where enforcement data is maintained. For example, this could include a link to the annual self-certifications of compliance now required under Title V of the Clean Air Act, as some states are beginning to make Title V permit data available online. Ideally, ECHO could indicate with a “yes” or “no” whether the facility reported any violations, then link to a copy of the actual certification through state databases. Likewise, ECHO should be linked to permits and other enforcement data, such as the full text of enforcement orders, for each facility.
- 8) The Inspector General has frequently documented the failure of states to enter data into federal databases that include information about the compliance status of major sources, and in some cases appear to refuse to enter the data at all. This makes it almost impossible to maintain a national data base and to track the compliance history of large corporations that operate in many states. While data systems do need improvement, the public should not have to wait for what has already been an endless round of debate between federal and state agencies to have access to reasonably accurate enforcement information.
- 9) Ideally, federal and state data should include information about the environmental results that are obtained from enforcement actions. EPA has required staff in both headquarters and regional offices to document pollutant reductions in enforcement actions by completing case conclusion data sheets. ECHO could provide a link to these data sheets, and ask for similar information from state agencies.

While the ECHO database needs substantial improvement, it is an important first step in securing the public's right to know whether our environmental laws are being obeyed, and whether they are enforced when they are violated.

Sincerely,

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